IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1259 OF 2005.
IN
CRIMINAL APPEAL NO.178 OF 2005.

Firoz Khan Hafij Khan Pathan ... Applicant.

V/s.

The State of Maharashtra ... Respondent.

Mr. S.R.Chitnis, Sr. Counsel with Mr. Sunil R. More, advocate for Applicant.

Mr. D.P.Adsule, APP for State.

CORAM : V.M.KANADE,J
DATE : MARCH 24, 2005.

P.C. :

1. Heard the learned counsel for the applicant and APP for the State.

2. The applicant is convicted by the Trial Court for the offence punishable under section 376, 366 of the Indian Penal Code r/w 343 of the Indian Penal Code and 506(ii) I.P.Code and sentenced to suffer R.I.for 7 years,5 years, 6 months and 3 years respectively.

3. The prosecution case is that the prosecutrix was brought by the accused alongwith PW-1 and PW-2 to Mumbai and thereafter, accused brought a taxi and thereafter, forcibly took the prosecutrix in the said taxi. The prosecution case is that the P.W.1 and

P.W.2 chased that taxi. However, they could not succeed in intercepting the taxi in which the accused and prosecutrix were travelling. Thereafter, they contacted the husband of the prosecutrix at Malad and finally, a police complaint was filed. Police traced the prosecutrix in a lodge at Bhendi Bazar where she stated that the accused has forcibly taken her to the said lodge and raped her against her wishes. The prosecution could not examine the prosecutrix as during the pendency of the trial, she died at her native place on 7/7/2001. The prosecution has relied on the evidence of PW.1 and PW.2 who had accompanied the prosecutrix to Mumbai.

4. Considering the fact that the evidence of the prosecutrix is not available and that the PW.1 and PW.2 did not state that the prosecutrix while she was being taken by the taxi has stated that she was forcibly taken by the accused, prima facie in my view, case is made out for grant of bail. The medical evidence also does not support prosecution case as there was no physical injuries on the person of the prosecutrix or on the private part when she was examined by the private doctor. The applicant therefore, be released on bail in sum of Rs.5,000/- with one or two sureties in like amount.

(V.M.KANADE,J)